

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EDWARD R. COSS, JR.,	:	CIVIL ACTION NO. 1:01-CV-00878
	:	
	:	
Petitioner,	:	(Judge Caldwell)
	:	
	:	(Magistrate Judge Blewitt)
v.	:	
	:	
JAMES P. MORGAN, et al.,	:	
	:	
Respondents	:	

**FILED**  
**SCRANTON**

JAN 12 2005

MARY E. D'ANDREA, CLERK  
Per  DEPUTY CLERK

**NOTICE OF FILING**  
**OF**  
**APPENDIX TO RESPONDENTS' REPLY BRIEF**

NOTICE IS HEREBY GIVEN that Respondents, through their undersigned counsel, have this date filed the annexed appendix to their Reply Brief.

Respectfully submitted, January 11, 2005.

s/ William P. O'Malley  
William P. O'Malley, Atty. I.D. # 58520  
Assistant District Attorney  
Lackawanna County Courthouse  
200 N. Washington Avenue  
Scranton, PA 18503  
(717) 963-6717

**CERTIFICATE OF SERVICE**

I hereby certify that on January 12, 2005, I am serving a copy of the foregoing: *Notice of Filing of Appendix to Respondent's Reply Brief*, as well as the *Appendix* itself which, with index, is attached hereto, upon  
Petitioner,

Mr. Edward R. Coss #CB5970  
SCI Dallas  
1000 Follies Road  
Dallas, PA 18612

by prepaid first class U.S. Mail,

s/ William P. O'Malley  
William P. O'Malley  
Assistant District Attorney

**Index to Appendix**

<b>Informal Appendix Page Number</b>	<b>Date of Filing</b>	<b>Description of <u>Document</u></b>
1-3		The State Court Docket, consisting of three pages.
4-6	7-12-94	<i>Application for Order Mandating Clerk of Courts, And/or Court Stenographer, to Furnish Court Records and Transcribed Notes of Testimony</i> was filed by James Coss, petitioner's brother.
7	7-19-94	<i>Order</i> entered by Judge Cottone granted the foregoing application with the proviso that James Coss would be obliged to pay the cost for the requested documents.
8-10	3-2-95	<i>Motion For Transcripts of All Proceedings</i> was filed, pro se, by petitioner.
11-12	8-11-03	<i>Order</i> , entered by Judge Cottone which, among other things, appointed new counsel for Mr. Coss and gave notice that "... a hearing on the defendant's petition for post conviction relief will be held on Friday, September 26, 2003 at 10:00 a.m."
13-15	3-17-04	<i>Order</i> , entered by Judge Cottone, upon express "consideration of the <i>annexed Motion of the Commonwealth to Dismiss PCRA Proceedings</i> , as filed before me" issued a rule to show cause directing Mr. Coss to show cause why the annexed motion of the Commonwealth should not be granted; rule returnable before April 1, 2004, hearing scheduled on April 14, 2004.

16	4-14-04	A letter from Petitioner was filed requesting that the hearing set for April 14, 2004 be rescheduled.
17	4-14-04	<i>Order</i> entered rescheduling the hearing from April 14, 2004 to May 20, 2004.
18-19	5-21-04	<i>Order</i> entered, <u>dismissing</u> Mr. Coss' PCRA petition.
20	6-14-04	<i>Notice of Appeal</i> to Superior Court filed, pro se, by Coss.
21-24	6-28-04	Superior Court Docket Pages filed.
25-28	8-30-04	<i>Superior Court Order</i> filed, directing that the appeal proceed as a counselled appeal.
29	12-2-04	<i>Notice of Discontinuance of Appeal</i> from Superior Court filed.

1. CASE NO. 86-cr-645	2. OTN Juvenile to Adult	11. SEX	RACE	13. DATE OF BIRTH
3. LAST NAME Coss	4. FIRST NAME Edward	5. MI	14. JP 13.00, State 7.00, CVC25.00	
6. ADDRESS		15. HEARING MAGISTRATE		
7. CITY	8. STATE	9. ZIP	16. BAIL TYPE	17. AMT. BAIL \$ 20,000.00.
10. CHARGES AND CLASSIFICATION		FEL	MSD	APP
A. Disorderly conduct				
B. Resisting arrest				
C. Aggravated assault				
D. Theft				
E. Criminal mischief				
F. Simple assault				
Criminal trespass				
19. ARRAIGNMENT DATE 7-18-86		23. DATE(S) OF EXTENSION		
20. DATE IND/INFO FILED 7-17-86		22. DATE 180 DAY EXP.		
21. DATE TRANS. REC. 7-7-86				

24. ATTORNEY NAME(S)

DEFENDANT

DISTRICT  
ATTORNEY

PROSECUTOR

25. CO-DEFENDANT(S)

Now This 31<sup>st</sup> Day of Dec A.D. 1986  
1. *Robert Helwig*Received Cash Bail in the  
Sum of \$ 9,750.00 From

3. WILLIAM P. RINALDI

CLERK OF JUDICIAL RECORDS

26. INITIAL PLEA	27. FINAL PLEA	28. TYPE OF TRIAL	29. BEGINNING DATE	30. ENDING DATE	31. NO. TRIAL DAYS
32. VERDICT/DISPOSITION					
A.		D.			
B.		E.			
C.		F.			

33. NAME OF JUDGE	34. POST TRIAL MOTIONS	35. DATE OF SENTENCE	36. DATE SENT. IMPOSED	37. FINE	38. COST
-------------------	------------------------	----------------------	------------------------	----------	----------

DATE	ACTIONS, JUDGMENT AND CASE NOTES
7-7-86 1	Filed Order and Order of Court, Penetar, Judge.
7-9-86 2	Filed Amended Order. By the Court, Penetar, Judge.
7/21/86 3	Filed Petition for reduction of Bail
7-22-86 4	Filed REQUEST FOR BILL OF PARTICULARS
7-22-86 5	Filed REQUEST FOR PRETRIAL DISCOVERY & INSPECTION.
7-25-86 6	Filed Answer to Petition for Reduction of Bail.
7-29-86 7	Filed Commonwealths Answer to Request for Pretrial Discovery and Inspection.
8-29-86 8	Filed Commonwealths Response to request for Bill Of Particulars.
7-29-86 9	Filed Order. By the Court, Munley, J
7/31/86 10	Defendant and Robert Helwig each tent in \$1000.00
8-1-86 //	Filed OMNIBUS PRE TRIAL MOTION. RULE

## CRIMINAL

Page 2

DATE	ACTIONS, JUDGEMENTS, CASE NOTES
8-6-86 12	Filed ANSWER TO ONMIBUS PRE TRIAL MOTION
10-31-86 12/1	Now Oct. 30, 1986 issue joined, jurors called and sworn in according to the Law, say on same day defense demurrers to charge of Agg. Assault and Terroristic threats, demurrer is sustained. Say on Oct. 31, 1986 they find defendant to charges of Institutional Vandalism, Criminal Mischief and Simple Assault Guilty. To charges of Resisting Arrest and Disorderly Conduct they find defendant Not Guilty. Sentence deferred pending pre sentence investigation.
	By the Court, Cottone, J
12-12-86 13	Filed PETITION TO REVOKE BAIL RULE
12-31-86 14	Filed Order. (Revocation of Bail). Munley, J.
1/30/87 15	Defendant Sentenced to pay costs of prosecution and to serve a min of six Months to a max of one year on charge of Inst. Vandalism and on simple assault a min of 6 months to a max of 1 year consecutive at a State Corr. Facility. Cottone, J.
1/30-87 16	Filed MOTION TO DISMISS UNDER RULE 1100 ORDER. By the Court
1/2-87 17	Filed PROCEEDINGS AT SENTENCE (Cottone, D. Walsh)
1/3/87 18	Filed Motion for reconsideration of sentence.
2/2/87 19	Filed Commonwealth's Answer to Motion to Dismiss Under Rule 1100.
2-2-87 20	Filed Order. By the Court, (Reschedule hearing on Motion).
3/13-87 21	Filed Order. By the Court, Cottone, (Petition denied).
3/12-87 21	Filed Motion for Modification of Sentence Nunc Pro Tunc.
3-3-87 22	FILED PETITION FOR CREDIT FOR IMPRISONMENT
4-6-87 23	Filed Order Dismissing petition for credit.
6-10-87 24	Filed Application for Order mandating Clerk of Courts to furnish court records.
6-12-87 25	Filed PETITION UNDER POST CONVICTION HEARING ACT
6-23-87 26	Filed ORDER--pro se application is DENIED By the Court, Cottone, J.
6-29-87 27	Filed Commonwealth's Answer to Petition Under Post Conviction Hearing Act.
12-29-87 28	Filed Application for order mandating Clerk of Courts and stenographer

EDWARD COSS

# CRIMINAL

Page 3

86 CR 645

[illegible]

IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY  
CRIMINAL DIVISION

Commonwealth of Pennsylvania

VS.

Edward Coss

C/P NO. 86 CR 645

Application For Order Mandating Clerk Of Courts, And/Or  
Court Stenographer, To Furnish Court Records And Transcribed  
Notes Of Testimony.

To The Honorable Judges, of the above said Court.

This application by James A. Coss, Petitioner respectfully submits the following facts and affidavit for "Order" furnishing him with the requested Court Records.

1. That Petitioner has on a numerous occasions requested these records from the Court stenographer office dating back to December, 1988 only to be refused the same.

2. Petitioner is the brother of the defendant (caption above).

3. Petitioner knows that a fee is required to receive the same and petitioner is more than willing to pay the fee required.

4. The requested records are both necessary and pertinent in this petitioner's pursuit of proving his brother's innocence and assisting in the filing of his brother's appeal.

5. Ample authority is asserted pursuant to Griffin V. Illinois, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 2d 891 (1956) : Mayer V. City, of Chicago 404 U.S. 189, 92 S.Ct. 410, 30 L. Ed. 2d 371. (1971); Gardner v. California 393, U.S. 367, 89 S. Ct. 580, 21 L.Ed. 2d 601 (1969).

6. Petitioner will pay cost of Record/Transcript.



WHEREFORE, your petitioner prays this HONORABLE COURT, will issue under the hand and seal of this courtan "ORDER" upon the clerk of courtsand/or court stenographer, to furnish this petitioner with certified copy of these respective court records/ transcript of trial.

Respectfully submitted,

*James Coss*

James Coss

AFFIDAVIT

Commonwealth of Pennsylvania :

:

County of Lackawanna :

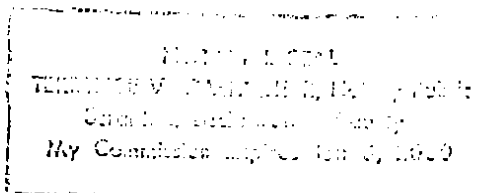
Before me, the undersigned authority, Personally appeared James Coss, who, being dully sworn according to law, deposes and says that he is the petitioner in the fore going application for court records, and that the facts set forth therein are true and correct to the best of his knowledge, information, and belief.

Sworn and subscribed before me this

14th day of March, 2004  
*[Signature]*

signed

*[Signature: James Coss]*



29

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS  
: OF LACKAWANNA COUNTY

**VS.**

CRIMINAL DIVISION

EDWARD COSS,

Defendant

NO. 86 CR. 645

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

O R D E R

NOW, this 19th day of July, 1994, upon application of James Coss on behalf of the defendant, Edward Coss, it is hereby

ORDERED that the Clerk of Judicial Records and/or the Court Reporter furnish copies of any and all Court records and transcripts to the said James Coss upon receipt of the proper costs and fees for the same.

BY THE COURT

Cottrell, J.

**FILED FOR RECORD**

~~JUN 19 11 57 AM '61~~

WILLIAM P. RINALDI  
CLERK OF  
JUDICIAL RECORDS

FILED FOR RECORD  
MAR 2 1 46 PM '95  
WILLIAM P. RINALDI  
CLERK OF  
JUDICIAL RECORDS

COURT OF COMMON PLEAS  
LACKAWANNA COUNTY

Common. of Pa.  
vs.

30

EDWARD COSS  
DEFENDANT

No. 86 CR 645

MOTION FOR TRANSCRIPTS  
OF ALL PROCEEDINGS

DEFENDANT, PRO SE, HEREBY MOVES FOR  
TRANSCRIPTS OF ALL PROCEEDINGS AS  
IT RELATES TO THIS CASE.

1. DEFENDANT WAS CONVICTED BEFORE A JURY  
ON 10-31-86 FOR THE CRIME OF SIMPLE  
ASSAULT AND VANDALISM. IN ORDER  
FOR DEFENDANT TO PROPERLY PREPARE HIS  
CASE, FOR APPEAL, DEFENDANT REQUESTS  
THAT ALL TRANSCRIPTIONS BE TRANSCRIBED  
INCLUDING PRE-TRIAL HEARINGS, TRIAL AND  
SENTENCING HEARING.
2. THE HONORABLE JOHN COTTON PRESIDED  
OVER THE TRIAL, SENTENCING AND OMNIBUS  
MOTION.
3. PETITIONER STATES UNDER OATH THAT HE  
IS INDIGENT, WITHOUT PROPERTY OR

PAGE 2

INCOME EXCEPTING NOMINAL WAGES EARNED FOR PRISON LABOR; THAT HE IS WITHOUT THE MEANS TO PAY FOR THE ABOVE SAID RECORDS; THAT THESE RECORDS ARE BOTH NECESSARY AND PERTINENT TO PERFECTING AN ADEQUATE POST CONVICTION HEARING ACT PETITION SEEKING RELIEF FROM THE JUDGEMENT IN THE INSTANT CASE.

PETITIONER (DEFENDANT) HAS BEEN GRANTED INFORMA PAUPRIS AND WAS REPRESENTED BY THE PUBLIC DEFENDERS OFFICE AT ALL STAGES OF THIS CASE.

4. PETITIONER HAS REQUESTED THESE RECORDS FOR NEARLY EIGHT (8) YEARS AND IT IS IMPRATIVE THAT HE HAS THEN IN PURSUING AN APPEAL IN FEDERAL COURT.

WHEREFORE, FOR ANY OF THE FOREGOING REASONS IT IS REQUESTED THAT THE COURT ORDER THE RELEASE THE NOTED RECORDS AND BE GIVEN TO PETITIONER.

RESPECTFULLY SUBMITTED,  
Edward Coss  
EDWARD COSS

## AFFIDAVIT

Comm. of PA.  
LACKAWANNA COUNTY

86 CR 645

EDWARD COSS, WHO, BEING DULY SWORN  
ACCORDING TO LAW, DEPOSES AND SAYS  
THAT HE IS THE PETITIONER IN THE  
FOREGOING APPLICATION FOR COURT RECORDS,  
AND THAT THE FACTS SET FORTH THEREIN  
ARE TRUE AND CORRECT TO THE BEST  
OF HIS KNOWLEDGE, INFORMATION, AND  
BELIEF.

SIGNED: Edward Coss  
EDWARD COSS

DATE: FEBRUARY 23, 1995

## PROOF OF SERVICE

THE PETITIONER HAS PROVIDED SERVICE OF THIS  
MOTION TO THE CLERK OF COURTS, DISTRICT  
ATTORNEY, AND JUDGE JAMES M. MUNLEY OF  
LACKAWANNA COUNTY, BY HAND DELIVERY,  
ON 23RD DAY OF FEBRUARY, 1995.

By: Edward Coss

EDWARD COSS

10

COMMONWEALTH OF PENNSYLVANIA, : IN THE COURT OF COMMON PLEAS  
: OF LACKAWANNA COUNTY

v.

CRIMINAL DIVISION

EDWARD R. COSS, JR.  
Defendant

NO. 86-CR-645 31

**ORDER**

Now, this 11<sup>th</sup> day of August, 2003 a motion for Post Conviction Relief having been filed pro se by the defendant in June, 1987 and an answer filed by the Commonwealth on June 29, 1987. and it appearing that the matter has never been set for hearing it is hereby ORDERED as follows:

1. That the defendant may proceed in forma pauperis without payment of any costs.
2. That Terrence Gallagher, Esquire, previously appointed as counsel for the defendant is removed as counsel.
3. That Christopher P. Cullen, Esquire, 1306 Woodlawn Street, Dunmore, PA 18509 is appointed to represent the defendant.
4. That the Clerk of Judicial Records is directed to do the following forthwith:
  - (a) to serve copies of the defendant's pro se motion and this Order upon the District Attorney of Lackawanna County.
  - (b) to send copies of the defendant's pro se motion and this Order to Rose Ann McGowan, Esquire, the defendant's trial counsel at P.O. Box 280, Moscow, PA 18444; and to Terrence Gallagher, Esquire, defendant's previous post conviction counsel, at 416 Jefferson Avenue, Scranton, PA 18510; and to

FILED FOR RECORD

2003 AUG 11 P 3:24

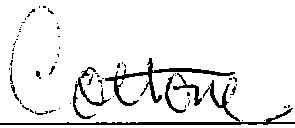
MARY E. RINALDI  
LACKAWANNA COUNTY

Christopher P. Cullen, Esquire, defendant's Court appointed counsel at 1306  
Woodlawn Street, Dunmore, PA 18509.

(c) to send a copy of this Order to the defendant, Edward P. Coss, Jr. at 118  
South Church Street, Carbondale, PA 18407-2666.

5. That a hearing on the defendant's petition for post conviction relief will be held  
on Friday, September 26, 2003 at 10:00 a.m.

BY THE COURT,

  
\_\_\_\_\_/ S.J.



COMMONWEALTH OF PENNSYLVANIA, : IN THE COURT OF COMMON PLEAS  
: OF LACKAWANNA COUNTY

v.

CRIMINAL DIVISION 32

EDWARD R. COSS, JR.  
Defendant

NO. 86-CR-645

**ORDER**

Now, this 17<sup>th</sup> day of March, 2004, upon consideration of the *annexed Motion of the Commonwealth to Dismiss PCRA Proceedings*, as filed before me:

1. A rule is granted upon the Defendant EDWARD COSS, to show cause why the annexed motion should not be granted. The rule is returnable before April 1, 2004.
2. A hearing is scheduled before the undersigned Judge on Wednesday, April 14, 2004 at 9:30 a.m.
3. Christopher J. Osborne, Esquire, 142 Adams Avenue, Scranton, PA 18503 is hereby court appointed to represent the defendant.

BY THE COURT,

Cottone, S.J.

Attorney for the Commonwealth: William P. O'Malley, Esquire  
Assistant District Attorney  
Lackawanna County District Attorney's Office  
200 North Washington Avenue  
Scranton, PA 18503

Attorney for the Defendant: Christopher J. Osborne, Esquire  
142 Adams Avenue  
Scranton, PA 18503

Defendant: Mr. Edward Coss  
118 South Church Street  
Carbondale, PA 18407

FILED FOR RECORD  
2004 MAR 17 P 3:24  
MARY E. RINALDI  
LACKAWANNA COUNTY

COMMONWEALTH OF PENNSYLVANIA	:	IN THE COURT OF COMMON PLEAS
	:	of
v.	:	LACKAWANNA COUNTY
	:	
EDWARD COSS,	:	<u>86 CR 645</u>
Defendant	:	

**Motion of the Commonwealth to Dismiss PCRA Proceedings**

The Commonwealth respectfully moves the Court to dismiss the PCRA proceedings pending in this cause upon the following reasons and grounds:

1. The *Motion for Postconviction Collateral Relief* filed by Edward Coss should be dismissed because, as a condition of eligibility for post-conviction relief the provisions set forth in 42 Pa.C.S.A. § 9543(a)(1) of the Post Conviction Relief Act expressly require:

**§ 9543. Eligibility for relief**

**(a) General rule.**—To be eligible for relief under this subchapter, the petitioner must plead and prove by a preponderance of the evidence all of the following:

- (1) That the petitioner has been convicted of a crime under the laws of this Commonwealth and is at the time relief is granted:
  - (I) currently serving a sentence of imprisonment, probation or parole for the crime;
  - (ii) awaiting execution of a sentence of death for the crime; or
  - (iii) serving a sentence which must expire before the person may commence serving the disputed sentence.

2. Although at the time the PCRA petition was filed, Edward Coss was in custody, and was then currently serving a sentence of imprisonment, probation or parole for the crime, thereby satisfying the eligibility requirements of 42 Pa.C.S.A. § 9543(a)(1)(i) he no longer is in custody, his sentence having been fully served is now expired; moreover, Edward Coss does not now satisfy, nor has he ever satisfied any of the eligibility requirements set forth in 42 Pa.C.S.A. § 9543(a)(1)(ii) or 42 Pa.C.S.A. § 9543(a)(1)(iii).

3. Consequent upon the foregoing, the Commonwealth respectfully asserts that the Court lacks statutory authority to grant postconviction relief to the petitioner and that in the absence of statutory authority the Court is not otherwise empowered to grant postconviction relief.

4. The Commonwealth, based upon personal inquiry, believes that the defendant receives his mail, and therefore can be given notice of these proceedings, at the following address:

Edward Coss  
118 South Church Street  
Carbondale, PA 18407

WHEREFORE, the Commonwealth requests the Court to enter an Order affording to Edward Coss the opportunity to show cause, if any he has, why the relief sought hereby should not be granted.

Thereafter, the Court is requested to enter such further Orders as would seem to the Court appropriate to an informed and orderly disposition of these PCRA proceedings.

Respectfully submitted, March 15, 2004



William P. O'Malley  
Assistant District Attorney  
Atty. I.D. # 58520  
Lackawanna County  
200 N. Washington Avenue  
Scranton, PA 18503  
(570) 963-6717

4-14-04

TO: THE Honorable S.J. Cottone

From: Edward R. Cass.

MARCELO RINALDI  
LACI  
PROPERTY

FILED FOR RECORD  
2004 APR 14 A 9:19

34

RE CR-86-645

ON MARCH 17, 2004 YOUR HONOR  
ISSUED AN ORDER AND A RULE  
TO SHOW CAUSE returnable before  
APRIL 1, 2004. ALSO YOUR HONOR  
APPOINTED ATTY. CHRISTOPHER OSBORNE  
IN THIS MATTER.

TODAY, APRIL 14, 2004 THE DATE  
A HEARING IS SCHEDULED I WOULD  
LIKE TO BRING TO YOUR ATTENTION  
THAT AT NO TIME HAVE I BEEN  
CONTACTED OR DISCUSSED 86 CR 645  
WITH ATTY OSBORNE NOR DID I  
RECEIVE ANY COMMUNICATIONS REGARDING  
THIS MATTER INCLUDING THE RULE  
WHICH WAS RETURNABLE ON APRIL 1, 2004.

I respectfully request a continuance  
in this matter until after I get  
an opportunity to speak to AN ATTORNEY  
4-14-04 Signed Ed Cass 15

✓  
Christopher J. Osborne, Esquire  
ATTORNEY I.D. #80064  
POWELL LAW  
142 Adams Avenue  
Scranton, PA 18503  
(570) 961-0777  
ATTORNEY FOR DEFENDANT

COMMONWEALTH OF  
PENNSYLVANIA

VS.

EDWARD R. COSS, JR.,

Defendant

IN THE COURT OF COMMON PLEAS  
OF LACKAWANNA COUNTY

CRIMINAL DIVISION

NO. 86-CV-645

33

**ORDER**

AND NOW, this 14 day of April, 2004, it is hereby ORDERED

AND DECREED that the PCRA hearing scheduled for April 14, 2004 relative to the above-referenced matter is hereby rescheduled to Thursday, May 20, 2004 at 2:30 p.m.

IT IS SO ORDERED:

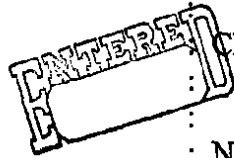
By Terri C. Costello

FILED FOR RECORD  
2004 APR 14 P 3 10  
MARY E. BUNDEL  
LACKAWANNA COUNTY

COMMONWEALTH OF PENNSYLVANIA, : IN THE COURT OF COMMON PLEAS  
: OF LACKAWANNA COUNTY

v.

EDWARD R. COSS, JR.,  
Defendant



CRIMINAL DIVISION

NO. 86-CR-645

ORDER

The Defendant having filed a Post Conviction Relief Petition when he was currently serving prison sentences for the subject crimes, and having since completed the full sentences for said crimes, he is no longer eligible for any post conviction relief.

To be eligible for relief the provisions set forth in 42 Pa. C.S.A. §9543 (a)(1) of the Post Conviction Relief Act expressly require:

**§ 9543.**

**Eligibility for relief**

**(a) General rule.** - To be eligible for relief under this subchapter, the petitioner must plead and prove by a preponderance of the evidence all of the following:

- (1) That the petitioner has been convicted of a crime under the laws of the Commonwealth and is at the time relief is granted:
  - (i) currently serving a sentence of imprisonment, probation or parole for the crime;
  - (ii) awaiting execution of a sentence of death for the crime; or
  - (iii) serving a sentence which must expire before the person may commence serving the disputed sentence.

Although at the time the Defendant's post conviction petition was filed, the Defendant was in custody and was then serving sentences of imprisonment that satisfied the eligibility requirements, he is no longer in custody nor on probation or parole for the

FILED FOR RECORD

2004 MAY 21 P 3:51

MARY F. RINALDI  
LACKAWANNA COUNTY

crimes, his sentences having been fully served they have expired. Therefore, the defendant does not now satisfy any of the eligibility requirements set forth in 42 Pa. C.S.A. (a)(1).

Now, this 21<sup>st</sup> day of May, 2004, the Defendant's Post Conviction Relief petition is hereby dismissed.

By the Court,

Callone, S.J.

William P. O'Malley, Esquire  
Assistant District Attorney  
200 North Washington Avenue  
Scranton, PA 18503

Christopher J. Osborne, Esquire  
142 Adams Avenue  
Scranton, PA 18503

Mr. Edward Coss  
118 South Church Street  
Carbondale, PA 18407

IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY, PA  
45TH JUDICIAL DISTRICT  
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :

VS. :

EDWARD R. COSS, JR. :

CASE NO.: 86 CR 645

\*\*\*\*\*

NOTICE OF APPEAL

Notice is hereby given that the Petitioner, Edward R. Coss, Jr., hereby appeals to the Pennsylvania Superior Court from the Order entered on May 21, 2004, which dismissed his Petition for Post Conviction Relief, pursuant to the Post Conviction Relief Act 42 Pa.C.S.A. Sections 9541-9546 *et seq.* Order is attached heretofore and also referenced by the attached copy of the docket entry.

BY: Edward R. Coss, Jr.  
Edward R. Coss, Jr.  
C/O Lackawanna County Prison  
1371 N. Washington Avenue  
Scranton, Pennsylvania 18509

FILED FOR RECORD

2004 JUN 14 P 2:15

MARY E. RINALDI  
LACKAWANNA COUNTY

36

20



9:43 A.M.

DRI

## Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 955 MDA 2004

Page 1 of 3

June 22, 2004



Commonwealth of Pennsylvania

v.

Edward R. Coss, Jr., Appellant

Initiating Document: Notice of Appeal IFP

Case Status: Active

Case Processing Status: June 22, 2004

Awaiting Original Record

Journal Number:

Case Category: Criminal

CaseType:

Aggravated Assault

Criminal Mischief

Criminal Trespass

Disorderly Conduct

Resisting Arrest

Simple Assault

Theft

Consolidated Docket Nos.:

Related Docket Nos.:

## SCHEDULED EVENT

Next Event Type: Docketing Statement Received

Next Event Due Date: July 6, 2004

Next Event Type: Original Record Received

Next Event Due Date: August 2, 2004

RECORD FILED IN SUPERIOR COURT

AUG 12 2004

HARRISBURG

*1 part  
missing*

FILED FOR RECORD

JUN 28 A 9 14

JUN 28 A 9 14

6/22/2004

3023

9:43 A.M.

DRI

**Appeal Docket Sheet**

Superior Court of Pennsylvania

**Docket Number: 955 MDA 2004****Page 2 of 3****June 22, 2004****COUNSEL INFORMATION**

**Appellant** Coss Jr., Edward R.  
**Pro Se:** ProSe **Appoint Counsel Status:**  
**IFP Status:** Yes

**Appellant Attorney Information:**

**Attorney:** Coss Jr., Edward R.  
**Bar No.:** **Law Firm:**  
**Address:** C/O Lackawanna County Prison  
 1371 N. Washington Avenue  
 Scranton, PA 18509  
**Phone No.:** **Fax No.:**  
**Receive Mail:** Yes  
**E-Mail Address:**  
**Receive E-Mail:** No

**Appellee** Commonwealth of Pennsylvania  
**Pro Se:** **Appoint Counsel Status:**  
**IFP Status:** No

**Appellee Attorney Information:**

**Attorney:** Jarbola III, Andrew John  
**Bar No.:** 44566 **Law Firm:**  
**Address:** Lackawanna Co DA's Office  
 200 N Washington Ave  
 Scranton, PA 18503  
**Phone No.:** (570)963-6717 **Fax No.:**  
**Receive Mail:** Yes  
**E-Mail Address:**  
**Receive E-Mail:** No

**FEE INFORMATION**

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
----------	----------	---------	-------------	----------------

**TRIAL COURT/AGENCY INFORMATION**

**Court Below:** Lackawanna County Court of Common Pleas  
**County:** Lackawanna **Division:** Criminal  
**Date of Order Appealed From:** May 21, 2004 **Judicial District:** 45  
**Date Documents Received:** June 21, 2004 **Date Notice of Appeal Filed:** June 6, 2004  
**Order Type:** PCRA Order **OTN:**  
**Judge:** Cottone, S. John **Lower Court Docket No.:** 86 CR 645  
 Senior Judge

**ORIGINAL RECORD CONTENTS**

6/22/2004

3023

9:43 A.M.

DRI

## Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 955 MDA 2004

Page 3 of 3

June 22, 2004



Original Record Item

Filed Date

Content/Description

Date of Remand of Record:

## BRIEFS

## DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
June 22, 2004	Notice of Appeal IFP	Appellant	Coss Jr., Edward R.
EDWARD COSS NEEDS TO SERVE THE T/C JUDGE WITH A COPY OF HIS NOTICE OF APPEAL THEN SEND SUPERIOR COURT A COPY OF HIS AMENDED PROOF OF SERVICE			
June 22, 2004	Docketing Statement Exited (Criminal)		Middle District Filing Office





## Superior Court of Pennsylvania

David A. Szewczak, Esq.  
Prothonotary  
Patricia A. Whittaker  
Deputy Prothonotary

Middle District

June 22, 2004

100 Pine Street, Suite 400  
Harrisburg, PA 17101  
717-772-1294  
[www.superior.court.state.pa.us](http://www.superior.court.state.pa.us)

Ms. Mary F. Rinaldi  
Clerk of Judicial Records  
Lackawanna County Courthouse  
200 North Washington Avenue  
Scranton, PA 18503

Re: 955 MDA 2004  
Commonwealth of Pennsylvania  
v.  
Edward R. Coss, Jr., Appellant

Dear Ms. Rinaldi:

Enclosed please find a copy of the docket for the above appeal that was recently filed in the Superior Court. Kindly review the information on this docket and notify this office in writing if you believe any corrections are required.

Appellant's counsel is also being sent a Docketing Statement, pursuant to Pa.R.A.P. 3517, for completion and filing. Please note that Superior Court Dockets are available on the Internet at the Web site address printed at the top of this page. Thank you.

Very truly yours,

David A. Szewczak  
Prothonotary

KRR

Commonwealth of Pennsylvania : IN THE SUPERIOR COURT OF  
: PENNSYLVANIA  
:   
: (C.P. Lackawanna Co. No. 86  
v. : CR 645)  
:   
: No. 955 MDA 2004  
Edward R. Coss, Jr. : Filed: August 26, 2004

**ORDER**

By order entered May 21, 2004, the trial court denied Appellant's petition for post-conviction relief. Appellant filed a *pro se* notice of appeal on June 14, 2004. On July 26, 2004, this Court directed Appellant to file a docketing statement on or before August 5, 2004. No docketing statement has been filed.

Upon review of the trial court record, it appears that appointed post-conviction counsel, Christopher J. Osborne, Esquire, never sought or was granted permission to withdraw as counsel for Appellant. Accordingly, the following is hereby **ORDERED**:

This Court's order of July 26, 2004 is hereby **RESCINDED**. As Attorney Osborne has not been granted leave to withdraw as counsel for Appellant, he is hereby **DIRECTED** to enter his appearance as counsel for Appellant in this Court. **See Pa.R.Crim.P. 120(C), 904(E)**. The Prothonotary of this Court is hereby **DIRECTED** to send a docketing statement to Attorney Osborne. The existing briefing schedule is hereby **VACATED**. Upon counsel's entry of appearance, a new briefing schedule will be set.

**Per Curiam**

**TRUE COPY FROM RECORD**

Attest: AUG 26 2004

*Patricia A. Whittaker*

Deputy Prothonotary  
Superior Court of PA - Middle District

FILED FOR RECORD

2004 AUG 30 P 12:28  
LACKAWANNA COUNTY  
MARY E. RINALDI

## Carbon Copy Recipient List

Addressed To: Mr. Edward R. Coss, Jr.  
SCI Waymart-CB 5970  
P.O. Box 256; Route 6  
Waymart, PA 18472

Carbon Copied: Christopher J. Osborne, Esq.  
Powell Law  
Barrister's Row  
142 Adams Avenue  
Scranton, PA 18503

Andrew John Jarbola, III, Esq.  
Lackawanna Co DA's Office  
200 N Washington Ave  
Scranton, PA 18503

Ms. Mary F. Rinaldi  
Clerk of Judicial Records  
Lackawanna County Courthouse  
200 North Washington Avenue  
Scranton, PA 18503

The Honorable S. John Cottone  
Senior Judge  
Court of Common Pleas of Lackawanna County  
Lackawanna County Courthouse, 200 North Washing  
Scranton, PA 18503

**Superior Court of Pennsylvania**

Middle District

David A. Szewczak, Esq.  
Prothonotary  
Patricia A. Whittaker  
Deputy Prothonotary

100 Pine Street, Suite 400  
Harrisburg, PA 17101  
717-772-1294  
[www.superior.court.state.pa.us](http://www.superior.court.state.pa.us)

August 26, 2004

RE: Com. v. Coss, Jr., E.R.  
No. 955 MDA 2004

---

Trial Court Docket Number: 86 CR 645

Dear :

Enclosed please find a certified copy of an order dated August 26, 2004 entered in the above-captioned matter.

Very truly yours,

A handwritten signature in cursive script that reads "Patricia A. Whittaker".

Patricia A. Whittaker  
Deputy Prothonotary

KRR

cc: Christopher J. Osborne, Esq.  
Andrew John Jarbola, III, Esq.  
The Honorable S. John Cottone  
Senior Judge  
Ms. Mary F. Rinaldi  
Clerk of Judicial Records

Ms. Mary F. Rinaldi  
Clerk of Judicial Records  
Lackawanna County Courthouse  
200 North Washington Avenue  
Scranton, PA 18503

C

---

1013 - 10/99

10/1/99



IN THE SUPERIOR COURT OF PENNSYLVANIA  
SITTING AT HARRISBURG

No. 955 MDA 2004

Commonwealth of Pennsylvania

v.

Edward R. Coss, Jr.

:

: PCRA Court

: of Common Pleas

: for the County of Lackawanna

: No. 86 CR 645

MARY F. RINALDI  
LACKAWANNA COUNTY  
2004 DEC -2 A 11 17  
CLERK OF JUDICIAL  
RECORDS  
Appeal from the

12/1/04 - The above appeal is hereby withdrawn and discontinued by order of:

Christopher J. Osborne  
Attorney for Appellant

12/1/04 - DISCONTINUED

TRUE COPY FROM RECORD

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of  
said Court, at Harrisburg, this 1st day of December 2004.

Patricia A. Whittaker  
Deputy Prothonotary

29